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By: James P. Jones
Chief United States District Judge

¹ The state advises that the former respondent, William Page True, is no longer warden of Sussex I State Prison, where the petitioner is confined. Accordingly, Gerald K. Washington, Acting Warden, Sussex I State Prison, is substituted as respondent pursuant to Federal Rule of Civil Procedure 25(d)(1).

his attorneys to present available evidence in mitigation at the sentencing phase of his trial. *See Bell v. True*, No. 7:04CV00752, 2006 WL 280847 (W.D. Va. Feb. 7, 2006) (granting in part and denying in part state's motion to dismiss). The petitioner is indigent and desires expert and investigative services in preparation for the evidentiary hearing. *See* 21 U.S.C.A. §§ 848(q)(4)(B), (q)(9) (West 1999) (providing that a capital habeas petitioner who is financially unable to obtain adequate investigative or expert services reasonably necessary for his case may apply to the court for payment of such fees or expenses). However, "[n]o ex parte proceeding, communication, or request may be considered pursuant to this section unless a proper showing is made concerning the need for confidentiality." 21 U.S.C.A. § 848(q)(9).

For the reasons stated by the state in its opposition to this motion, and for the reasons stated by the court in denying an earlier similar request by the petitioner, *see Bell v. True*, 356 F. Supp. 2d 613, 616-17 (W.D. Va. 2005), I find that the petitioner has not made a sufficient showing to justify an ex parte application.

Accordingly, it is **ORDERED** that Petitioner's Motion for Leave to File Section 848(q) Motion Ex Parte is DENIED.

ENTER: March 5, 2006

/s/ JAMES P. JONES
Chief United States District Judge